



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

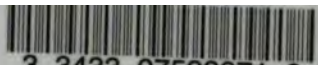
Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

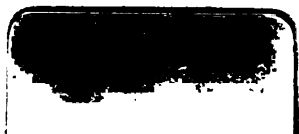
- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>



3 3433 07593071 3



SE
HAR

Hare
SE

262
1/2 8. 11 -
POLITICS IN ENGLAND AND THE UNITED STATES.

457
A LECTURE

BY

HON. ^{John Innes} J. I. CLARK HARE,

BEFORE THE

LAW ACADEMY OF PHILADELPHIA,

MARCH 30TH, 1880.

PHILADELPHIA:

J. M. POWER WALLACE, 132 SOUTH SIXTH STREET,
OFFICE OF THE LEGAL INTELLIGENCER,

1880. 2

THE NEW YORK
PUBLIC LIBRARY
ASTOR, LENOX
TILDEN FOUNDATIONS

PHILADELPHIA, April 8, 1880.

DEAR SIR :

The Law Academy, by a resolution adopted on the 7th inst., has delegated to us the very agreeable duty of asking a copy of your Annual Address for publication.

Trusting that you will feel at liberty to comply with this request,

✓ We are yours very truly,

FRANCIS A. LEWIS, JR.,
WALTER GEORGE SMITH,
J. BAYARD HENRY.

Committee.

HON. J. I. CLARK HARE.

PHILADELPHIA, April 10, 1880.

GENTLEMEN :

Your note proposing to publish my Address before the Law Academy of this city has been received, and it gives me pleasure to accede to your request.

Yours very truly,

J. I. CLARK HARE.

Messrs. FRANCIS A. LEWIS, JR.,
WALTER GEORGE SMITH,
J. BAYARD HENRY.

Committee.

LECTURE.

GENTLEMEN OF THE LAW ACADEMY:

I propose this evening to contrast some features of our Government with the means adopted in England for the attainment of like ends, and would ask your indulgence for my imperfect treatment of a subject that cannot easily be brought within the compass of a single lecture.

It has often been said that the design of the Constitution of the United States was drawn from the English Constitution, and there is a general, or what may be termed family resemblance in the structure of the two governments, which is too close to be fortuitous and shows that the remark is just. It is not less plain that this likeness is attended with great and essential differences, resulting not so much from choice as from the force of circumstances which rendered the institutions of the mother country inapplicable here. The comparison is the more difficult, because the English Constitution is not a constant quantity. Like the glacier, which though seemingly fixed and rigid, is yet plastic and suffers a continual change, it has varied in each century and sometimes with each successive generation. The system which prevailed under the

Tudors differed essentially from that which was established at the Revolution in 1688, and this has been subjected in our own times to almost as great a change. It is therefore important in reasoning from the English institutions to our own, to remember that the government under which our forefathers were born and from which they derived their ideas of constitutional freedom, was not identical with that which exists in England at the present day. The origin and development of the English Constitution are consequently a study which should be cultivated by every American, not only for its intrinsic value, but for the light which it sheds on the laws and institutions of the United States.

The Government of the United States is essentially limited. If this may also be said of the English Government, the extent and nature of the restraints are in many respects, different. The English Government was, in the form which it assumed in the reign of Edward I., and retained for centuries, limited by the mode in which authority was distributed among the several parts. The King had no power to make, to abrogate, or even to interpret the law.* Parliament could not legislate without the concurrence of the Crown. The executive power resided in the King, and subordinately in the officers and magistrates whom he appointed. He was then, in fact, as he still is, theoretically, the commander-in-chief who led the feudal array and the militia of the shires for the

* 12 Reports, 63, 74; Campbell's Lives of the Chief Justices, 271, 275.

defence of the realm, or to foreign conquest, and he was also the chief magistrate to whom belonged the duty of seeing that the laws were enforced. On the qualities or defects, the vigor or imbecility of the monarch, depended the repose, the safety, the greatness of the kingdom. If Henry V. or Queen Elizabeth, could raise England to a foremost place among the nations, she might be no less depressed by a Henry VI. or Charles II. Still the King could not engage successfully in any great or protracted enterprise, or provide effectually against invasion without the aid of Parliament. It was not merely that the right of levying taxes lay with the Lords and Commons. They were, as every King of England who persistently transgressed the limits set by the Constitution found to his cost, superior in military strength to any force that could be mustered by the Crown. It was, moreover, the singular merit of the English Constitution, as it existed in those earlier times, that while the Upper and Lower House were diverse, and counterpoised each other as well as the power of the Crown, they were yet, thanks to the high-spirited Knights who represented the shires and formed a connecting link between the aristocracy and the people, rarely disunited when grievances were to be redressed, a profligate minister punished, or a feeble or unworthy monarch deposed. As no material change could be made in the laws without their concurrence, so it was not easy to resist any legislative reform on which they insisted; and they had in the right of the Commons to impeach, and of the Peers to convict and sentence, a

weapon of which all public men stood in awe, and which, though grossly abused, was on the whole favorable to liberty and good government.

The laws were originally promulgated by the King, with the advice and consent of Parliament;* but the legislative power gradually passed from his hands to those of the Lords and Commons. This was not merely an outgrowth of Teutonic and Scandinavian freedom, but resulted from the feudal organization which defined the obligations of the subject, and made his concurrence essential to a change. So the King's dues, as lord paramount, were fixed by custom, and could not rightfully be increased without the consent of those who held of him as tenants. The great charter accordingly declared, that except "for ransoming our body, making our first born son a knight, and for once marrying our eldest daughter, no scutage or aid shall be imposed save by the Common Council of the realm." Stubb's Illustrative Documents, 290. And although this clause was omitted from the charter as reissued in the reign of Henry III., it was measurably re-enacted by Edward I., and became an intregal though often violated part of the Constitution: 1 Green's History of the English People, 290; 2 Institutes, 529. Parliament thus acquired the power of taxation, which is the key to every other, and with it ultimately the entire control of the government.

If the English Government was limited in its

* 2 Parliamentary History, 365; 1 Green's History, 461.

several parts, it was and still is absolute as a whole, or restrained only by public opinion, and the fear of provoking popular resistance. De Lolme relates that the English lawyers were wont to say that Parliament might do anything but renew the classic fable, by making a man a woman, or a woman a man. There is no change in the established order of things, no suppression of chartered or prescriptive right, that would not, if declared by Parliament, be legally binding on the English people: 2 Institutes, 525. Magna Charta, though in form a grant from the Crown, is in effect a statute, which with the statutes by which it was confirmed might be legislatively repealed, and this is equally true of the Petition of Right, and the other great landmarks of English liberty. Nor does the power of Parliament stop here. The judges might, if it is so willed, be dismissed to make way for others who would be more subservient to the passions of the hour as represented in the House of Commons. Representation might be denied to Wales or Yorkshire, a deed or will annulled, or land taken from the owner and given to a stranger. If a new faith were set up by Parliament, as it was in the time of Henry VIII., no one could allege that the act was void.

In this brief outline of the English Constitution, as it stands in the pages of Blackstone, we see a government absolute as a whole, but composed of three several branches, each performing an appropriate part and constituting an effectual check on the others. A nearer view will nevertheless disclose a singular difference between the theory and practice. In

the absence of legal or fixed boundaries there are yet certain ideal lines within which Parliament is in fact confined, and that cannot be transgressed without outraging public opinion, and producing a deep-seated discontent that would lead to revolution. It is in an unwritten code, in maxims handed down traditionally, in principles which have stood the test of experience, that we must seek the strength, the equipoise and the stability of the English Government. It is well for English freedom that it should be so, because the equal distribution of power existing at an earlier period has been singularly disturbed in modern times by the ascendancy of the House of Commons. In the XVI. century not only the foreign policy, but the internal administration of the kingdom, were exclusively under the dominion of the Crown. Parliament might, and to a certain extent did, legislate in matters that did not trench on the royal prerogative; but when the question was in what way, and through whom the law should be carried into execution, sedition repressed, or the country protected against foreign aggression, the Tudors, and even the feeble James I., were intolerant of the voice of Parliament. I need not remind you how large a share the passions, the enmities, the private feelings, and convictions of Henry V. and Queen Elizabeth had on the course of the English Reformation, and the servants of those sovereigns were, as history shows, chosen with but little deference for the opinion of the House of Commons. When a minister felt it might be important to have friends and supporters in Parliament, in

the meantime, the favor of his master was a sufficient safeguard. While such men as Wolsey, Cromwell, Burleigh, Walsingham or Bacon were placed near the helm, this was hardly a test of the power of the Crown, their abilities would have been distinguished under any form of government, but the omnipotence of the arrogant and ostentatious Buckingham under Charles I., and the fruitless efforts of successive Parliaments to bring him to justice, are a convincing proof that the Constitution did not yet afford a safeguard against the influence of an unworthy favorite.*

The English Government was then in fact what it is still sometimes called, a limited monarchy; the king being the motive and guiding power, and Parliament a check or restraint that kept the royal prerogative in bounds, and prevented it from encroaching too far on individual right. If Charles had been an abler man, or less arbitrary as a King, the change from the old to the new order of things might have been indefinitely postponed, or have turned in favor of the prerogative. But when the resentments which the despotic rule of Strafford had inflamed culminated in a bill of attainder, the king was wanting to a servant who had been thorough to his master, and the House of Commons obtained in the conviction and death of the minister an ascendancy that has not since been successfully disputed by the Crown. The restoration was, it is true, followed by an interregnum during which either principle might seem to be on the eve of

* 2 Parliamentary History, 404, 419.

gaining the upper hand; but when the conflict between the King and Parliament was pushed to an issue by James II., the monarchy was again worsted in the struggle, and ceased to be a controlling element in the English Government. The critical state of the times and his own abilities gave William III. a predominance which no sovereign of England has since enjoyed, and the accession of the Hanoverian line inaugurated the aristocratic Commonwealth that has since, with an increasing measure of popular influence, borne sway in England. It is true that George III. had, during the greater part of his reign, no inconsiderable share of the authority which is commonly ascribed to monarchs, but, with this exception, the power of the Crown has, during the last 160 years, been exercised by an executive counsel chosen by the House of Commons. Though bearing the title of the ministers of the king, they are in fact neither selected by nor responsible to him. Like the hand on the dial, he merely indicates a result which the previous course of events has made inevitable. To use a phrase which was constantly in the mouths of the opposition under Louis Phillippe, in a constitutional government formed on the English model, the monarch presides or reigns, but does not govern. The place filled by the President in our system is accordingly held in England, not by the King but by the Prime Minister, or rather by the cabinet taken collectively and acting as a whole. This constitutes a material difference in the working of the two systems, at a point where they might at first sight seem much

Material	
Vellum	
Lib. Buckram	
92	Politics in England and the United States
1/2 T. Mor.	
Special	
	Hare
Color	
Black	
Dark Blue	
Light Blue	
Dark Brown	
Light Brown	
Dark Green	
Light Green	
Olive	
Maroon	
Red	
Pattern	
As before	

4457

CONSTITUTIONS. 13

executive power is
Chief magistrate whose
islature. Practically,
the majority of the
be displaced by a vote
American Constitution
virtually become, the
evolve not on a Presi-
definite term, whom
annot remove, but on
time being, predomi-
us Stevens, and not to
y have belonged the
ould be reconstructed
ould have avoided the
e than once seemed to
ch formidable propor-
nation of the Executive
ld be beneficial here, I

S E C
1880

Remarks:

JAN 30 1845

form 208b (7-9-44 50m)

need not now inquire. It certainly was not the method of government contemplated by the framers of the Constitution.

Some of the results of this difference between the English Government and our own are interesting and instructive; I will advert to one of them. The King of England according to the letter of the Constitution is entitled to form alliances, to declare war and to bring it to a conclusion by a treaty of peace. In point of fact these powers are exercised by his ministers, who are in their turn, as I have already stated, designated by the House of Commons. If that body dis-

approves of the foreign policy of the government, if it is of opinion that the honor of the country is sacrificed on the one hand to a desire for peace, or on the other, that hostilities are uselessly prolonged, it may compel the existing ministry to resign, and fill their places with men who are pledged to a different course. It is true that when a minister withdraws, the power of appointing his successor is with the king, but as he must take the leader of the opposition, or some one whom the opposition will support, the choice is really made by Parliament.

Such a method places the men who stand at the helm of state under the control of the assembly which represents the nation, and compels them to shape their course according to its pleasure. If the will of the Prime Minister prevails, it is not because it is his will, but because he is able to convince a majority of his colleagues and of the House of Commons. It is the reverse of personal government, and has therefore been aptly designated as parliamentary. Our system, on the contrary, entrusts the executive department of the government to a Chief Magistrate, who, during his term of office and so far as his power extends, is virtually a king. Instead of a Prime Minister, designated by the Legislature and dependent on their votes for his continuance in office, we have a President chosen for four years, and who can only be removed by an impeachment and conviction for treason, corruption, or other high crime or misdemeanor. He is as much the representative of the entire people of the United States as any member of Congress can be of

his district, and should therefore exercise the discretionary powers confided to him by the Constitution, in the way that he may deem best calculated to promote the welfare of the country, which may not be the way deemed best by Congress. Take for instance, the case of a war which Congress thinks unnecessary or unjust, and wishes to close on terms that the enemy are willing to accept. Still it is the right of the President and not of Congress, to determine whether the terms are advantageous, and if he refuses to make peace the war must go on. Under such circumstances it would clearly be the duty of Parliament to withhold the supplies necessary for carrying on the war, because such a vote on their part, would produce a change of ministry followed by the return of peace; but as a corresponding action on the part of Congress will not lead to a cessation of hostilities, it is as clearly their duty to provide the means for prosecuting the contest with effect and bringing it to an honorable termination.

Accordingly, when President Polk precipitated hostilities with Mexico by marching an army into the disputed territory, Congress had no choice but to declare the existence of the war which he had provoked, and which they had no power to terminate. So the question, whether the South should be relieved from military occupation and regain the political freedom which the Constitution guarantees, was recently determined by the Executive and not by the Legislature, which could neither command the withdrawal of the troops, nor direct that they should remain. Other

cases may be imagined where the policy of the President may diverge from that preferred by Congress, and where it may notwithstanding be incumbent on Congress to attend upon and further the course of the Executive. This was more than once the case during the administration of Washington, whose sage policy kept the immature strength of the Republic from being involved in the war of giants that was then raging in Europe.

That such divergences of the Executive and Legislature are full of danger, is shown by the unhappy differences which occurred during the Presidential term of Mr. Johnson, and they are all the more likely to arise, because the party which prevails in Congress is not unfrequently in direct and violent opposition to that by which the Chief Magistrate was elevated to office. Instead of the mutual confidence that must exist under the English system between the department of the government which enacts and that which executes the law, there may be jealousies and heart burnings, followed by a resort to undue means to bend the Executive to the will of the Legislature, or place the Legislature under the feet of the Executive. In such a struggle the popular Assembly will generally, in the long run, prevail; and some of those who hear me may live to see the House of Representatives approach more nearly than it does at present to the position of the House of Commons. Such a result would be contrary to the theory of the Constitution, but may be forced on us by circumstances.

A Chief Magistrate who wields the whole military,

and no inconsiderable share of the civil power of the State, who can incline the scale to war and forbid the return of peace, whose veto will stay the course of legislation, and who is the source of the enormous patronage which is the main lever in the politics of the United States, exercises functions which are more truly regal than those of an English Monarch. Once chosen he is irremovable for four years by anything short of an impeachment by the House and a condemnation by a two-thirds vote of the Senate, and may mould the policy of the government, as did Jackson, with no great regard for the opinion of Congress. In a critical conjuncture his influence for good or evil may be enormous, and can be estimated by supposing that secession had occurred at the commencement of Mr. Buchanan's term of office, and that he had insisted on negotiating instead of meeting force with force. Elect such a magistrate for life, or give him a permanent hold on office, and he may be termed Mr. President, but will be every inch a king.

It is not surprising that an election of so much moment and on which so many selfish as well as public interests depend, should evoke burning passions on either side, and give occasion for the fraud, violence and intrigue which were unhappily so rife in the year which, as the hundredth Anniversary of our Independence, should have been free from such a taint; and it has become a question with reflecting minds, whether the Republic can bear the stress to which it is periodically subjected, or hope for another hundred years of life, unless some change is made in

the Executive department that will render the choice of a President less momentous than it is at present. The only way of accomplishing such a reform is to substitute Parliamentary Government for personal, by rendering the Cabinet responsible to Congress, and removable as in England on a vote of want of confidence. Such is the rule in France, where the ministers are nominated by the President, but depend on the votes of the Lower House and must resign if that is adverse. It is significant that the framers of the organic laws of the French Republic should, after a century's experience of the working of the English method and our own, have preferred the former as bringing the Executive within the control of the Legislature; and their wisdom would seem to be vindicated by the ease with which M. Grevy was chosen to succeed Marshal McMahon.

The steps by which Parliament has encroached on the Executive are not the only change that has occurred in the English Constitution since the reign of Queen Elizabeth. Technically and legally speaking, the enactment of a statute requires the united voice of King, Lords and Commons; unless they all concur, the bill falls. There was a period in English history when this was more than a legal fiction—when the Crown not only might, but did modify, amend or reject measures that had received the assent of both Houses of Parliament;* but when the power of the

* See Green's History of the English People, 461. "In former times the course of petitioning the King was this: The Lords and Speaker prepared their petition to the King. This then was called

Crown came to be vested in a ministry designated by and representing a majority of the Lords and Commons, such a veto ceased to be practicable, because the Prime Minister was responsible for the acts of the King, and could not consistently sanction the defeat of a measure which he had advocated in his place in Parliament. This check on the popular will has accordingly ceased to be a part of the English Constitution. If a law passes both Houses of Parliament it must receive the assent of a King, who can only speak through ministers who are the delegates and leaders of the majority that enacts the law.

There has been another change within the walls of Parliament. As late as the reign of Queen Anne, and for some time afterwards, the House of Lords was not only an integral, but a co-ordinate and equal branch of the government. To have their support was as important as to have a majority in the House of Commons, and no measure which the great body of the Peerage disapproved could well be passed over their heads by popular agitation. But as the constituency which the Lower House represented grew in intelligence and information—as wealth flowed into the great

the bill of the Commons, which being received by the King, part he rejected and put out, other part he certified, and, as it came from him, it was drawn into a law; but this course in the 2nd Henry V. was found prejudicial to the subject, and since in such cases they have petitioned by petition of right, as we now do who come to declare what we demand of the King, for if we should tell him what we should demand, we should not proceed in a parliamentary course.” Speech of Mr. Glanville at the Conference between the Houses of Parliament on the clause annexed by the Lords to the Petition of Right: 2 Parliamentary History, 365.

commercial cities and manufacturing towns, and the influence of the untitled gentry balanced or outweighed that of the Peers—the Commons rose to be the great council of the nation, and the power of the House of Lords diminished in a like proportion. This change, which had been going on for a length of time, culminated in the passage of the Reform Bill. The rejection of that measure by the Upper House, in October, 1831, led to a violent agitation throughout the kingdom. Another bill of the same nature was passed by the Commons in the following year, and although the Lords manifested their repugnance by a vote taken on the 7th of May, and that would have been decisive had there been no pressure from without, their opposition ceased in obedience to the counsels of the Duke of Wellington, and a month afterwards the bill became a law. This result placed the weakness of the House of Lords in a light that could not be misunderstood; they have since been virtually a revisory committee, rather than a co-ordinate branch of the Legislature; and it may safely be predicted that they will never again come to a grave political issue with the assembly which, from its origin and nature, has public opinion on its side, and represents the will of the English nation. The battle of the aristocracy will be fought hereafter, as it has been during the last thirty years in the House of Commons, and if lost there, will not be renewed in the assembly which was once the citadel of privilege. The Lords are, nevertheless, a useful check on rash and inconsiderate legislation, and when the question does not touch the popular heart, may amend bills that

have been passed by the Commons, or reject them absolutely.

In estimating the relative strength of the two branches of the English Legislature, it must not be forgotten that the powers incident to the Prerogative are virtually wielded by the Cabinet which is the creature of the Commons and responsible to them,* and it is not surprising that this additional weight should render the scale of the popular assembly preponderant, when it might otherwise be balanced by the Peers. It is in this sense that we must understand various utterances of the Duke of Wellington, and among others that the bill for the repeal of the corn laws "having been already agreed to by the other branches of the legislature the function of the House of Lords was at an end."† For as the Queen can only speak through a minister whom the Commons approve and will support, his voice is practically hers, even when he is endeavoring to carry a measure to which she may be personally adverse. Such a use of the Executive power for the furtherance of popular ends, or in aid of the dominant party in the Commons, is the more likely to occur, because since the Prerogative came under the control of a ministry whom Parliament selects and may dismiss, it has not been an object of distrust, and acts are viewed with complacency that would have provoked resentment had they proceeded from the royal will.‡ If the Lords had not

* May's Constitutional History, vol. 1, 457.

† See D'Israeli's *Life of Lord George Bentinck*, 229. Sheldon Amos, *Fifty Years of the English Constitution*, 349.

‡ May's Constitutional History, vol. 2, 136.

withdrawn their opposition to the reform bill, it would undoubtedly have been carried over their heads by the creation of new peerages at the instance of Earl Gray's Government, despite the extreme reluctance of William IV.* So the sale of commissions in the army was abolished in 1871, during Mr. Gladstone's administration, by a royal warrant, after the bill which the Commons had passed for that end had been rejected by the Peers. In like manner, while the Canons are formally convened to choose a Bishop, and yet must vote for the candidate who is designated by the Crown, or incur the pains and penalties of a *præmunire*, the nomination is really made by the Cabinet, and depends in the last resort on the popular will as manifested in the elections for the House of Commons.† Among the many anomalies of the English Government none is more characteristic. Although not answering to Cavour's ideal of a free church in a free state, it is yet eminently practical and just, because one who as a spiritual peer is to take part in the task of legislation, should obviously derive his authority from a national and not from an ecclesiastical source.

If we now inquire what measure of personal authority remains to the Sovereign, the answer is that he can do nothing save through ministers whom he appoints but cannot choose, and who are responsible for his acts before the country and to Parliament. So close is the watch, so little is needed to excite distrust, that a telegram to Queen Victoria from the Indian

* May's Constitutional History, vol. 1, 260.

† Green's History of the English People, vol. 2, ch. 4, p. 160.

Viceroy, Lord Lytton, announcing the advance of the British troops on Afghanistan, and a sympathetic note from her Majesty to Lord Chelmsford then commanding the forces in Zululand, became the theme of injurious comments in the press, and gave occasion for a critical debate in the House of Commons, in the course of which Sir Stafford Northcote admitted in replying for the government, that if Lord Lytton's object had been to obtain the Queen's support for a policy that was not approved by the Cabinet, it would have been a serious offence against the Constitution of the country and the privilege of Parliament.* Strange as it may seem, the Queen cannot name her Ladies in Waiting or Mistress of the Robes without consulting the Prime Minister, and must dismiss them if an incoming administration insists on such a change.† The husband of a Queen regnant is not less jealously regarded than herself and must not take part or manifest an interest in the politics of his adopted country; and the presence of Prince Albert in the House of Commons during Sir Robert Peel's speech for the repeal of the corn laws, drew forth a grave remonstrance from Lord George Bentinck as the leader of the Opposition, and was according to Mr. D'Israeli, "disquieting to moderate men on both sides."‡ Such *minutiæ* may seem trivial, but serve to indicate how little save the mere show of authority is left to an

* Fifty years of Constitution in England by Amos Sheldon, p. 333.

† May, vol. 1, 131; Sheldon Amos, 231.

‡ Life of Lord George Bentinck, 106.

English Monarch. The high sounding term prerogative, is now simply a technical and convenient form of expression for the powers that can legally be exercised by the Executive Department of the English Government without the sanction of an act of Parliament, and which though nominally belonging to the Queen, are controlled by the Cabinet and ultimately by the House of Commons.

It must not however be inferred that an English Sovereign is necessarily a cipher. If as Sir Stafford Northcote authoritatively declared from his place in Parliament in April, 1879, it is the Queen's right *to be consulted, to encourage, and to warn*, she is necessarily entitled to full information of all that occurs in the Cabinet or Parliament, and may exercise an influence that will to some extent compensate for the power that the Crown has lost.* The letters of the Queen and Prince Albert to the premier Lord Aberdeen, during the Crimean War, urging vigorous measures and deprecating the moderation of his language in the House of Lords, may be cited in proof of this remark.†

From this brief sketch we may see that the House of Commons has by slow degrees dispossessed the Crown and Peerage, and is now the propelling and guiding force, the sails and helm of the English Government. Raised from a subordinate position to be the hinge on which all else depends, it controls the

* See Sir S. Northcote's Speech in Fifty years of English Constitution by Sheldon Amos, 333.

† See Fifty Years of the English Constitution, 218.

House of Lords, selects the ministers, and wields through them the power of the throne. The Executive has in this way become the mouth-piece of the Legislature, and if the independence of the Judiciary is secure, the safeguard is in public sentiment and not in constitutional provisions.

The American Constitution may be thought to contrast favorably in these respects with that of England. The Senate is not, like the House of Lords, the exponent of a privileged class, weak in numbers and inferior in wealth and influence to the landed gentry and great manufacturers who are represented in the House of Commons; nor is it like the Senate of the several States a duplication of the Lower House, distinguished merely by a little more stability of tenure. It represents the States themselves, those great political corporations, which, properly regarded, are such important stays in the frame-work of our government. It is consequently less within the reach of the popular gales that blow so fiercely in a merely democratic assembly, and may keep the even tenor of its way when the waves of faction are running high in the House of Representatives.

The Senate is not the only restraint on the popular will, as declared in the House of Representatives. The 7th section of the 1st Article of the Constitution, requires that "every bill, order, resolution or vote of Congress shall be presented to the President, and if he returns it with his objections, it shall not become a law, without the concurrence of two-thirds of both Houses." The power which had grown obsolete in England was

thus made effectual here; and this clause is one of many proofs that the framers of our Constitution drew their inspiration from the political history of the mother country, and intended that the traditional checks and balance wheels of the monarchy should not be wanting in the Republic. Whether they were or were not aware that the administration of the English Government was gradually passing into the hands of a delegation from Parliament, they certainly did not intend to establish such a system in the United States, and leant in the opposite direction by making the consent of the President, save in the rare and exceptional case of a two-thirds majority in both Houses, essential to new legislation, or to the repeal, alteration, or re-enactment of the laws already made. He thus became a third branch of the Legislature, whose approval was ordinarily requisite to the success of any measure proposed by the other two. It was accordingly by a resolute veto that Jackson frustrated the re-charter of the Bank of the United States, and subverted the financial policy that had, with a brief interval, prevailed from the outset of the government, and that Grant prevented the expansion of the irredeemable currency that had been bequeathed by the civil war; and we have recently seen the persistent attempts of Congress to extort Executive assent, by making it the price of the supplies needed for the military and civil services, foiled by the steadfastness of Mr. Hayes. The power may not always have been wisely exercised, but its use is as consistent with the method of our government as it

would be foreign to the spirit of the English Constitution in the form which it has finally assumed.

It may be doubted, in view of this and some other clauses of the Constitution, whether the members of the convention which framed our government knew how rapidly the House of Commons was engrossing all the powers of the State. There were few even among the students of constitutional history who perceived what the studied phrases of Blackstone tended to conceal—that the dream of Vane and Sidney had taken shape and substance in a Commonwealth recalling the grandeur and far-reaching power of Rome. Men still viewed the royal prerogative with apprehension, and the aggression on the freedom of the Colonies had been popularly regarded as proceeding from the Crown. There was the more reason for such a belief, because George III. had, on mounting the throne, displayed a vigor and decision that might, if joined to a sound and penetrating judgment and the abilities that command popular respect and admiration, have changed the course of events on both sides of the Atlantic. The Revolution of 1688 did not so much prove the firmness of the English people, or their steadfastness in maintaining their freedom, as the incapacity of James II. Among the minor causes that have led to great events may be enumerated the marriage of Mary Queen of Scots to Darnley. It was from him that the monarchs of the House of Stuart inherited the waywardness, the weakness, the instability, that placed them in such marked contrast to their predecessors, and at once

provoked and encouraged the resistance which, in establishing the liberty of England, contributed so largely to our own. There are periods in the history of races when everything may turn on the greatness of an individual, as there are others when the current of events is too strong to be controlled. If James II. had possessed the force of character and military talent of Gustavus Adolphus, or even of his gallant descendant in the second generation, Charles Edward, the cause of popular liberty would have been seriously imperilled. After the defeat at the Boyne and the surrender of Limerick—the last city that held out for the Stuarts—one of their most devoted adherents declared his readiness to renew the conflict if the other side would change kings. It might, as late as the succeeding century have been possible for a wise and able prince, possessing the popular qualities of Cæsar or Henry IV., to put the liberties of the nation beneath the Crown. Such, at least, is the opinion of a great critic and historian, Mr. Grote. But this is one of those chapters which Destiny leaves unwritten for want of a fitting instrument.

In the selfish acquiescence of Queen Anne and the honest mediocrity, broken by occasional lapses into vice, of the Hanoverian line, there was nothing that could imperil Parliamentary government, and much to foster and advance its growth. During the earlier part of the reign of George III. there was indeed a reflux that promised to restore no small portion of the authority which the Crown had lost.

The spirit of loyalty had languished for seventy

years in England for want of its appropriate aliment. Though James II. had deeply wounded the high church divines and the landed gentry, they still regarded his deposition and the exclusion of his descendants as a sacrilegious spoliation. William III. was in their eyes a military usurper, Queen Anne the unnatural occupant of a brother's throne, and George I. and II. alien intruders who kept the rightful heir from his inheritance. The Royalists, by a strange sport of fortune, were thus made antagonistic to the actual wearers of the crown, and caught up or echoed the cry of patriotism until they came to regard it as their own.* A country party was thus formed which, from love for monarchy, opposed the Court, and favored a more liberal rule than that of the great Whig families, which had originally espoused the cause of the Hanoverian line from a sincere attachment to Constitutional freedom. The Stuarts, who had never been thoroughly Anglicized, became still more estranged by their long residence on the Continent, while the

* "Your right Jacobite, sir, disguises his true sentiment. He roars out for revolutionary principles; he pretends to be a great friend to liberty, and a great admirer of our ancient Constitution, and, under this pretence, there are numbers who every day endeavor to sow discontent among the people. These men know that discontent and disaffection are, like wit and madness, separated by thin partitions, and they therefore hope that if they can once render the people thoroughly discontented, it will be easy for them to render them disaffected. By the accession of these new allies, as I may justly call them, the real but concealed Jacobites have succeeded even beyond their own expectation." So crushing was this retort that the Patriots prudently refrained from dividing.—*Sir Robert Walpole's speech in the House of Commons as given in Mahon's History*, vol. 2, pp. 263, 264.

Guelphs took root in their adopted country, and at length produced a scion that might fairly be considered as of English growth. The death of Frederick Prince of Wales, in March, 1751, left his eldest son, heir apparent, with every prospect of a long and successful reign. Brave, prejudiced, honest, in many respects a typical Englishman, his ambition was to play the part of a patriot king as it had been portrayed by Bolingbroke, and the nation was well disposed to second such an attempt. The brilliant raid of the Pretender, in 1745, had been fatal to the Jacobite cause, not so much through the defeat at Culloden, as by showing that it might be strong in the Highlands, in Ireland, or in the support of France, but that Englishmen would not hazard life and fortune in its behalf. Men who, like Dr. Johnson, had been nurtured in the belief that the right of kings to govern was from God, might still theoretically adhere to the exiled line, but were nevertheless, with few exceptions, in common with the great body of the nation, ready to accept the youthful prince as their king.* Fourth in descent, and third in succession from George I., it could not be denied that he had a prescriptive if not legitimate title to his grandfather's throne. Accordingly when he assumed the crown as George III. the tide of loyalty reverted to its natural channel, and might, with skillful pilotage have raised the sovereign above the control of Parliament. For many years there was no party in England capable of

* See Redgauntlet, vol. 2, ch. 7, 14; Croker's Boswell, ch. 16, p. 147, Mahon's History, vol. 4, ch. 37, pp. 208, 209.

holding the King in check. The Tories, in obedience to their instincts, became the devoted adherents of the Court, while the Whigs, who had, as the defenders of the Hanoverian succession as established by Parliament, regarded the first sovereigns of that House as clients rather than as masters, were now kept at a distance, and broke into factions in the selfish pursuit of place, or more generous, went into opposition on behalf of the Liberal principles that were endangered by the increasing influence of the Crown.

No circumstances could well have been more favorable for the restoration of personal government, but the attempt was necessarily unsuccessful in the hands of one whose qualities would have been honored in a private station, but were too narrow for a throne.* The young King turned from his constitutional advisers to his Groom of the Stole, Lord Bute, who had gained an ascendancy over the Royal mind which was wholly disproportioned to his abilities, and the favorite was appointed one of the Secretaries of State with an influence which made him virtually Prime Minister, and led to the withdrawal of the elder Pitt from the conduct of a war which owed its success to his genius. The motives for the change were merely personal, and it has been said with truth, that for many years and while the King retained his reason,

* "A better farmer ne'er brushed dew from lawn,
A worse King never left a realm undone."

Byron's Vision of Judgment.—Stanza 8.

The last line is an exaggeration.

no statesman whom he disliked could obtain a seat in the Cabinet, no policy be adopted which he disapproved. If the narrow and exclusive measures that lost the Colonies to England were initiated in Parliament, they received a constant and avowed support from the Throne; and it was through the firmness of George III., in opposition to the great majority of the House of Commons, that the younger Pitt was able to make the appeal to the country which resulted in driving the ministry formed by the coalition between North and Fox from power, and making him Prime Minister of England. In these instances, as well as later, on the question of Catholic emancipation, the King threw the weight of his character and rank into the scale with an inflexibility of purpose that had a marked influence on the course of events; but his intervention, though unmistakably sincere and honest, was seldom fortunate either for the nation or himself, and when on the recurrence of his malady, in 1810, the Prince of Wales became Regent, kingly government, in the full sense of the term, ceased to exist in England.

It is not merely in the independence of the Executive that the Government of the United States may be contrasted with that of England. The separate existence of the judicial power is, at least in theory, more distinctly marked and attended with stronger guarantees. The English judges are, it is true, appointed for life, and have for nearly two hundred years fulfilled their duty with an impartiality that cannot easily be surpassed; but they may still be dismissed at any

moment by Parliament. It is the assurance that Parliament will not abuse its power that secures their independence. If the House of Commons were a merely popular assembly, it might not exercise this self-restraint, or the judges be so secure in their tenure of office. Moreover, Parliament may as I have already intimated, blend the Judicial and Legislative function; and by an attainder, or bill of pains and penalties, deprive an obnoxious individual of his property or life. It is not necessary that the offence should be political, or even that a legal offence should be alleged, the statute may be *ex post facto*, or sentence the alleged criminal without assigning a cause. I do not mean to imply that such a law is likely to be passed in England; there is, perhaps, no country where men are less in danger from arbitrary power, but the safeguard is in the temper of the House of Commons, which may in the course of time undergo a change,

From what has been said, it is obvious that if the Executive Department of the English Government is distinct and separate, it is notwithstanding controlled and administered by agents whom the Commons select and may dismiss at pleasure; and next that although the separation between the Legislature and Judiciary is more distinctly marked, it may be disregarded or effaced by Parliament. What then, it may be asked, since Parliament is thus omnipotent, is the English Constitution? What distinguishes it from the various governments in which power is confessedly absolute? The answer is that if the only limit to the authority of Parliament is that set by the reason and judgment of

the Lords and Commons, they still proceed according to rules and precedents which, having been handed down for ages, possess a restraining influence which written constitutions sometimes want. Parliament might deal with a political enemy as it dealt with Strafford; might arrogate to itself the trial of any cause that it did not choose to leave to the ordinary tribunals; might, if it saw fit, supersede the courts of justice by a commission acting under martial law. These things are possible, but centuries have passed since any Englishman has been deprived of life or goods, except by the judgment of his peers or in the due course of law prescribed by Magna Charter; nor does it enter into the mind of any Englishman to apprehend danger through the direct or indirect use of judicial or executive power by Parliament. On the contrary, there is no assembly where a respect for vested rights and personal liberty is more deeply rooted, or that is less inclined to go beyond just bounds to the injury of either. When on full investigation and debate, it appears that a measure cannot be adopted consistently with the principles of the Constitution, the argument is as conclusive as if the measure were one that Parliament could not adopt.

An inquiry may here be made which deserves an answer. Since Parliament virtually nominates the Ministry and may compel them to resign, what security is there against an arbitrary and capricious exercise of its power which may prevent the execution of a settled policy, and render the Executive the slave of the Legislature? The answer is, that the Cabinet may

advise the Crown to dissolve Parliament, and bring its members before their constituents to answer for their conduct. The creature thus has a check on the creator, the servant on the master, and may, if a difference arises call in the Nation as an arbiter.

It is no doubt conceivable that an artful and designing monarch might unite with a Parliamentary cabal to remove an obnoxious minister without permitting an appeal to the people; but such a course would increase the influence of the statesman whom it was designed to crush, and insure his ultimate return to power.

It results from the above sketch of the practical working of the English Constitution, that a principal and perhaps the most important function of the House of Commons is elective, to designate the persons who are to fill the executive department of the government, and exercise the powers which the Constitution of the United States confers on the President. This is not effected by a formal vote. Certain men come to the front, and are recognized as having the ability or influence to act as leaders, and when a crisis occurs they must be taken because they are the only persons who can control the House of Commons. A result has thus been fortuitously attained, which the framers of our government sought to produce by means which have been conspicuously unsuccessful. They knew that a numerous and popular constituency may have a common purpose, but cannot save in rare and exceptional instances, form a deliberate judgment as to the means by which its will can be carried into effect, or the persons who are best fitted to execute

it. As the people must legislate through representatives, and interpret the law through judges, so they should not act personally and directly in choosing a Chief Magistrate. If such a power is conferred, it will slip from the popular grasp and be used by demagogues for selfish and ambitious purposes. The Convention sought to overcome the difficulty by an ingenious expedient. The people of the United States could not reasonably be expected to fix on a man having the gravity, dignity and matured experience requisite for a President of the United States. Such qualities raise their possessor above the common level and tend to segregate him from his fellows. Moreover, the inhabitants of the various sections would have their local preferences and could not readily confer together, or unite upon the candidate best fitted for such an exalted post. It seems, however, to have been taken for granted that if the masses were incompetent for such a task, the several States would have no difficulty in selecting men in whose wisdom they could confide, and who would exercise a sincere and unbiassed judgment. The soundest statesmen, the best read lawyers, the most experienced men of business, would be chosen as Electors, and would, after mature deliberation in their respective colleges, fix on some individual whom public opinion could not but approve as worthy of the first place in the Republic. This elaborate contrivance is, as you are well aware, frustrated by pledging the Electors to vote for the candidate of the party to which they belong, and which uses them as its instruments. So entirely is

this the paramount, though unwritten law, that if they were to exercise their judgment in accordance with the letter and spirit of the Constitution, the act would be universally regarded as an outrage, and might lead to civil war. Usage has thus in less than a century abrogated an organic statute, which was intended to be an integral part of the frame-work of the government, and insusceptible of change except through a constitutional amendment.

The assemblies to which the choice of a President properly belongs, having thus virtually ceased to exercise their powers, these devolve on the politicians on either side, who meet in convention and designate the persons among whom the American people must select a Chief Magistrate. The limitation is as real as if it were written in the Constitution, because the citizen who gives his suffrage to any other candidate virtually throws away his vote, and might as well absent himself from the polls. This practical repeal of the Constitutional provision would be of less moment if the nominating conventions represented the community as a whole, or were chosen in a way prescribed and regulated by law, but they are self-constituted bodies whom the State does not recognize, and for which consequently it cannot provide. There are two elections, one to select the candidates, the other to determine which of them shall prevail; and while elaborate precautions are taken to protect the latter against force and fraud, the former has no such safeguards. There are no means of excluding a fraudulent or illegitimate vote, nor any appeal to an unbiassed

tribunal, if it is admitted. No one can exercise the right of suffrage at the primary elections without being registered as a party man, and those only have a controlling influence who are partisans. The successful merchant, the substantial tradesman, and the industrious artisan, stand aloof, and their place is filled by adventurers, who make a trade of politics, with a view not so much to the honors of public life as to its gains. Hence it happens that the American people are governed for many purposes, and especially as it regards the choice of the men who fill the halls of legislation, and administer the executive departments of the government, by an oligarchy whose merit does not compensate for their numerical insignificance. I have asked in mixed assemblages whether any one present had taken part in the choice of the delegates to a Presidential convention without receiving an affirmative reply, and I am convinced that such persons are so few in number as to be out of all proportion to the community which they affect to represent. They have, moreover, in general, no will of their own, and are simply the tools of a still smaller body of tacticians who touch the springs and control the movements of the whole machine. There are, I believe, some four or five hundred persons in either party, who could, if they agreed, determine who should be its candidate, and thus virtually compel the citizens to vote for him, or suffer the election to go by default in favor of some one who is politically more offensive and personally not less obnoxious.

It is not difficult to understand why the Electoral

Colleges have sunk so much below the level of the duty intrusted to them by the Constitution. They are ephemeral bodies, called into existence for the performance of a single function, and ceasing as soon as it is fulfilled, and they do not individually or collectively possess the weight and dignity to resist pressure from without, and exercise an independent judgment in such a choice as that of a President of the United States.

Far different is the position of Parliament. It is an assembly venerable from its antiquity, and as the repository and safeguard of English liberty, which proceeds according to known rules, precedents and traditions, and is the source from which we, in common with all civilized nations, have derived our conception of liberal institutions and constitutional law. Consisting for the greater part of men distinguished for birth, wealth, or attainments, and who do not depend for their social position on their seats as legislators; it does not meet for a day and then dissolve, but has continuing and important duties to fulfil—to regulate the finances; to amend the civil and criminal jurisprudence; to review the foreign and domestic policy of the government, and to change it, if need be, by a vote of want of confidence. The contests to which such questions give rise call forth the best abilities on either side; the great parties which divide the House learn who is sagacious in counsel and eloquent in debate, and are not likely to select chiefs who will lead them to defeat. The English Premier must, therefore, not only be one who can think clearly and express his ideas in appropriate language, but he must also have

the commanding ability to silence opposition, and take the lead in a struggle where force of character is not less essential than eloquence. An author who is not more remarkable for the eccentricity of his style, than for his entire disregard of justice, has spoken contemptuously of the rule of able speakers, and expressed his preference for the heroism which makes a successful appeal to force. If Mr. Carlisle's view is correct, Mahomet, Frederick the Great, and Napoleon, deserve better of mankind, and have a higher claim to reverence than Demosthenes, Chatham, the younger Pitt, or Daniel Webster. A government of rhetoricians is certainly not desirable, but such men do not easily attain a first place in an assembly which meets for the transaction of business, and is as eminently practical as the English Parliament, and true eloquence is generally associated with the qualities which should meet in one who seeks to rule his fellows.

There is another and still more important difference. An American President, once chosen, is secure of his office for four years, and whatever may be his blunders or inefficiency, can only be removed by an impeachment; but Parliament not only selects the Ministry, but can change it whenever it thinks proper. The Cabinet is constantly on trial—the motion which fails to-day may be renewed to-morrow; and if the force of circumstances raises an incompetent man to power, he will be removed as soon as his unfitness becomes manifest. He stands in the forefront of the debate, exposed to the shafts of argument, invective and ridicule, and his party will not readily witness a failure

which would involve their own. The President is put to no such proof, The only communication between him and Congress is through a formal written inquiry, and no less formal reply; his messages need not come from his own pen; and as the Cardinals have been said to look for weak lungs and impaired digestion in making choice of a Pope, so the politicians who are intriguing for the Presidency, may think that their interests will be promoted by the nomination of a second-rate man, whose talents will not command a second term.

In the study of institutions we must consider their actual working, as well as the theory on which they are based, and the neglect of this precaution may lead to conclusions which are essentially false. Where a government has endured for any length of time, some branch of a more vigorous growth generally supplants or overshadows the rest. Thus we have seen that, although the outward forms of the English Constitution are unchanged, the House of Commons has become the controlling power of the State. So the Electoral Colleges of the United States have dwindled into an unmeaning show, while the caucus, in its various forms of the primary election and the nominating convention, has acquired an all-pervading influence which the founders of the Republic certainly did not anticipate. It has accordingly been said with much truth that all governments must perish unless they are periodically brought back to their first principles. In applying this maxim it is nevertheless requisite to consider whether the deviation which we

are attempting to correct is a natural growth, or one of those excrescences which deform, and may ultimately destroy the plant. He would be an erring reformer who would put the Crown in England where it stood in the reign of Elizabeth or James I. It were well if as much could be said for the oligarchic conventions that have engrossed so large a share of power in the United States, and would be attended with still greater evil if they were not held in check by the small body of independent voters who persist in thinking for themselves, and when the ticket is exceptionally bad, stand aside, or vote for the candidate of the opposite party.

The election of the Chief Magistrate is not the only point in which the working of our institutions has falsified the expectations of the men by whom they were founded. Unhappily, the malady is not confined to a single branch, but threatens the entire system. The political decadence of our government is a constant theme of complaint in private assemblies and the public press, and is the more remarkable, because the social result is, in many respects, fortunate. The mass of the people of the United States are humane and intelligent, and not less honest than an average German, Englishman or Frenchman, and there are few countries where education is so generally diffused. If property is rapidly accumulated in the great commercial centres, it is as rapidly distributed under the operation of equal laws of inheritance, and a large proportion of the population enjoys that moderate competence which places its possessor beyond the

temptations alike of poverty and riches, and is favorable to the development of the qualities that are essential to self government. It is accordingly generally conceded that the American people displayed more than ordinary sagacity, firmness and moderation in dealing with Secession, not only while the conflict lasted, but at its close. Unfortunately, while the nation has risen in some respects to a higher level, its public men have declined in a more than equal ratio, and will not with some creditable exceptions, bear comparison with the framers of the Constitution, or the leaders in counsel and debate, during the opening years of this century. Many causes have been assigned for a phenomenon which is so disheartening to republicans, and among them that the American is too much bent on pecuniary success to care for the Commonwealth, and suffers questions of the highest moment to go by default. This accusation seems to me thoroughly unfounded. In no part of the world do men respond with more alacrity to their country's voice, whether it summons them to the field or to the performance of a civil duty. No slackness was found on either side, during the late civil war, and there are few who absent themselves from the frequent elections which are held under the auspices of the Federal and State governments. If further proof is needed, we may point to the hospitals, prisons, public trusts, and the numerous other institutions of private charity or general usefulness, which are conducted by men who withdraw from business, and labor gratuitously for the common good. It is not, therefore, from a lack of

public spirit, that the primary elections on which all else depends, are shunned by the best and most patriotic citizens, and we must look elsewhere for the explanation of a fact which all good men deplore.

One cause unquestionably is, as I have elsewhere stated, that these assemblages are, in fact caucuses which the law does not recognize and cannot regulate, and that if a voter is overawed or excluded from the polls, or a certificate fraudulently given to a delegate who did not receive a majority of the suffrages, the only mode of redress is an appeal to an irresponsible committee, which may sympathize with the persons who contrived the wrong. Moreover, the party rules are so worded as to exclude every one who did not vote the entire ticket at the last election, and will not promise to be faithful at the next; and as there are many persons who cannot conscientiously give a pledge which would limit their freedom of choice, and may compel them to support an unworthy candidate, so the effect is to disfranchise a large number of the men whose attendance it would be most desirable to secure.*

* The following extract from Harper's Weekly of March 6th, 1880, shows how the political machine is worked in our cities, and that the effect is to disfranchise the great body of the citizens.

"There is one docile political personage who is generally overlooked and contemned, but who is a very important part of every election. We mean the individual voter. He is not a holder of office, nor a seeker of office; he is merely an intelligent private citizen whose business prevents him from giving his exclusive attention to politics, but who wishes to do what he can to secure an honest, economical and patriotic administration of affairs. He reads in his newspaper that the only way in which he can "make

If these were the only difficulties, the practical good sense of the American people would perhaps supply a

himself felt " is to begin at the beginning, and attend the primary meeting. But the city newspaper which gives this advice, is either delightfully innocent or a mocker. The voter is told that if he neglects the primary meeting, and fails to vote at it, he has no right to complain of the action of those who do, and that he has only himself to blame if nominations are made and policies adopted which he does not approve. We should like to ask the intelligent and comfortable city voter who is reading these lines how often he attends a primary meeting, or knows when one is held, and whether the reason that he does not go is not the feeling that it would be of no use. But whether he thinks of it at all or not, we can inform him that his suspicion is correct, and that it would be of no use. When his newspaper urges him to go to the primary meeting, or acquiesce in its action without grumbling, it exhorts him to do what it ought to know that he cannot do. He is disfranchised, and cannot vote at the primary even if he should demand the privilege. He has no voice in the initiation of political action, and all he can do is to ratify or to refuse to ratify the "job put up" by others.

This is an interesting fact for the important personage of whom we have spoken, the individual voter, who, although he does not make politics his business, has the power to give success or defeat to political parties. Until he recognizes this fact he is a mere pawn and counter in the hands of professional politicians, who play their game by the baldest bribery of patronage or open corruption. The election in the State of New York is generally decided by the result in the city, and that is arranged upon both sides by politicians who treat the respectable voting reader of these lines as the overseers of plantations in the ante-bellum days treated their slaves. "Go to the primaries, or take the consequences," shout the newspapers. But let the voter see whether he can go to the primaries. The system is essentially the same in both parties. The Republicans borrowed it from Tammany Hall. It divides the city into district associations, and authorizes every voter to become a member of the association in the district of his residence, and of that association only. The conditions of admission are proposition by responsible members, a favorable report from a committee, and a pledge to sustain the "regular" action of the party. This scheme, of course, excludes from membership, and consequently from the right of

remedy, but there is a malign influence resulting from the vicious system under which every public servant

voting at the primaries, every man who is objectionable to the rulers of the association, because nothing is easier than to "hang up" an obnoxious name in the committee, while self-respecting men are very slow to pledge themselves in advance to support "regular" action, without regard to its honesty or expediency. The result of the system upon the Republican side is this, that of more than 58,000 voters in the city, no more than 6,000 or 8,000, at the most, are members of the association. More than 50,000 of the 58,000 Republican voters who are exhorted to go to the primaries could not vote if they went. The exhortation is a mere mockery in such a community as a great city, however wise it may be in a small rural neighborhood. The facts have been long familiar to those who are interested, but a letter from Mr. George Bliss, published last November, gave a clear insight into the subject to all who had no knowledge.

Three or four years ago the "Easy Chair" in *Harper's Monthly* described the attempt of a good citizen, one of the individual voters who could not devote all his time to politics to take part in a primary meeting. It was in another city, indeed, and he took part, but very much as a leaf takes part in the flowing of a river. Mr. F. W. Whitridge, in the current number of the *International Review*, relates his experience and that of a friend in New York, and his story is well worth the attention of those who exhort attendance upon primaries as the panacea of our political ills. Mr. Whitridge and his friend went to the primary as per exhortation. There was a man in the room at a table, and a few other men were lounging about. Others came in, and after saying something to the man at the table, went out again. The two individual voters waited patiently for the meeting to be organized, in order to "make themselves felt." But at the end of an hour they were informed that the primary was in progress; that the gentlemen who had come in had voted; that a ticket which was shown to them was going to be elected, although votes, of course, could be cast for any one else; and finally, that only members of the association could vote. This is the way in which the immense New York city delegation to a State Convention, which can usually decide the action of a convention, is selected, and this is the exact measure of the value of the exhortation to individual voters to go to the primaries or to hold their tongues. It shows—and it is but one part of the evidence—

is removable at pleasure, and will inevitably be dismissed unless he not only does the party bidding but upholds the patron to whom he owes his place. There are, it has been authentically stated, more than two hundred thousand offices, State, municipal and Federal, held by a slavish tenure which compels the incumbent to obey his political task-makers, at the risk of being deprived of the means through which he gains his bread. If he is not required to make bricks without straw, he must at least furnish the straw from his own bed which may be a scanty one, or, in plain English, devote no inconsiderable portion of a salary, which presumably is not too large to procure faithful

how far the machinery of politics has eaten out the principle of popular institutions, and how absolute is the despotism of professional politicians, that is, of men who make a business of packing caucuses and conventions in order to force upon the voter who cannot give all his time to such business the alternative of supporting whatever they propose, or of practically helping the other party. But the individual voter, if he chooses to assert himself, is still the important personage. It is true that he cannot give all his time to politics; and that he cannot cope with the professional politician at the primary, but he can vote against him at the polls, and teach him in the only way in which he can be taught, that he cannot count upon a great party as upon a flock of sheep. There is a deep and rapidly-growing disgust and indignation with this inexorable despotism. This feeling gave a tremendous note of warning at the last election in New York. It is felt by those who do not choose to advertise their opposition, but who know how to "make themselves felt" at the polls, if they cannot do so at the primaries. It is idle and worse to represent such an abuse of organization as in itself a necessary organization. It is made possible only by the patronage of office. While that patronage is open to such abuse, the despotism can be checked only by the quiet independence of the individual voter. But it can be completely overthrown only by the awakening of public opinion to the destruction of the vast bribery fund of patronage."

and efficient service, to a fund which is employed in maintaining the party organization, and not unfrequently for factious and personal ends. It should also be remembered that for every man who is actually in place, there are three or four aspirants, one at least in his own party, and two or more on the other side, who all expect to succeed him when removed, and are ready instruments in the hands of a politician who will consent to promote their views.

The natural result of such a system is a swarm of political adventurers, who, though serving under different chiefs, are always prepared to unite against any citizen whose chief desire is to promote the public good, and whom they consequently regard as an intruder on a domain which they desire to control for their own purposes. The affiliation is sometimes open and avowed, sometimes concealed under a decent veil, and we accordingly read of clubs serving under the names of "Jones," "Brown," or "Robinson," of the "Americus" Club, and of a mysterious band whose pilgrimage assuredly is not to the Holy Land;* or, turning to New York, of Tammany, Mozart Hall, and the other notorious brotherhoods which have been used as instruments by such master-spirits as Sweeney, Tweed, and Kelly. It is not surprising that such a force should in the long run prove irresistible, and engross the entire field of politics. Reform associations may be constituted, and partial successes be obtained here and there,

* The "*Mysterious Pilgrims*," a political club, generally believed to have been established by the politicians of both parties for the attainment of private ends through public means.

but an army of regulars will always prevail against a militia however high spirited and patriotic, and at the close of each succeeding year party government is found to have become more entirely a machine. The evil has grown to such a height that the meeting of our Legislative Assemblies is viewed with apprehension, and their adjournment hailed with delight, and the Constitutional Convention which recently sat in this city, after lessening the evil by taking every power from the Legislature that was not indispensable, applied a palliative by providing that the session should be biennial; and a similar proposition has been made with regard to Congress.

That such restrictions should be needed, shows how much we have sunk below our proper level. Where no grave disorder afflicts the State, the Legislature may be trusted to give the law to the other departments of the government, and provide for each contingency as it arises. Such is the case in England, where Parliament exercises an authority which would be arbitrary but for a self-imposed restraint. If Congress or the State Legislatures were thus absolute, no vested right would be secure, and every man who had anything to lose would have to be constantly on the watch against the undue influence in which, as it is generally believed, so many of our laws originate. No one who is conversant with the political history of the last fifty years will think this picture overcharged, and I might appeal for its reality to the conventions which have been successively engaged in devising

elaborate precautions against ignorant and corrupt legislation.

I do not know that any one remedy will suffice to heal a disorder which is so profound and of such long standing, but the nearest approach to a radical cure would be found in making the tenure of office during good behavior. Human nature is everywhere much the same; the differences arise from the influences to which men are subjected; and a people who are systematically led into temptation will scarcely remain in the straight and narrow path. As our government is now constituted, office is a powerful magnet which draws all the baser passions into political life, and repels high toned and patriotic feeling. The "ins" are swayed by their fears, the "outs" by their hopes, and both are apt tools in the hands of ambition and intrigue. It is not surprising that men who do not disdain to use such levers distance their more scrupulous competitors, nor even that a veteran politician who has long been versed in such arts, should monopolize a State and transmit it as a family possession. A change in the tenure of office would correct this evil, or reduce it to proportions that would be no longer dangerous. The office-holder is naturally the most cautious of mankind, and if he knows that he is secure in a close adherence to his public duties, will not go beyond them. If the much talked of reform in the civil service, which is impracticable without the aid of legislation, had really been accomplished, it would have been superfluous to forbid the officers of the Federal Government to mix in politics. It was because

the men who had been appointed by a Republican Administration, knew that nothing would save them if the Democrats came into power, that the President's command was inefficacious, and might indeed be reasonably objected to as putting the manipulators of one party in bonds, and leaving those on the other side free to employ their usual tactics.

It is, I think, an inevitable inference from the considerations above stated that if the government were conducted on the principles which prevail in private life, and the public servants retained so long as they performed their duty, the office-holder would withdraw altogether from politics, or cease to be a controlling element. Nor is this all; not only would the actual occupants be free to vote as conscience dictated, but the Commonwealth would be delivered from the swarm of aspirants whose hopes are centered on the places that are already filled. It has been said with too much truth that for every man who enjoys the sweets of office there are half a dozen striving for his seat, and who do the bidding of some political patron in the hope that his influence will facilitate the accomplishment of their desire. Such expectations, like lottery tickets, are apt to prove fallacious, but do not on that account have a less powerful hold on the imagination of mankind.

Removal from office in order to fill the vacancy with personal or political adherents is a practice unknown to the better days of the Republic, and of comparatively recent growth, and was originally vindicated on the ground that when a party succeeds to power there

should be a change of men as well as of measures, and that the incoming administration cannot safely rely on the officers who were appointed by their predecessors. This pretence has long since been laid aside, and it is now generally understood that one who aids in securing the nomination of a President, Governor or Senator, may demand a place although none is vacant and his desire cannot be gratified without turning out some public servant who has been equally faithful to his party, but does not happen to have a friend at court. If the doctrine that to the victors belong the spoils was mischievous as originally promulgated, it is far more demoralizing now, when, as Mr. Marcy bitterly observed, every political *condottierre* thinks himself entitled to despoil the camp of his own party if there are no other means of rewarding his immediate partisans. Such a system has an inevitable and increasing tendency to faction and cabal, and is not less prejudicial to party success and discipline than to the welfare of the community at large. The results are at once ludicrous and sad. The first qualification for the appointment of a letter carrier or custom house officer is that he shall be able to carry his precinct. If he can, he is sure of a recommendation from a member of Congress or State Senator who wants his services as a delegate. If he cannot, the postmaster or collector who ventures to appoint him will be subjected to a pressure which few men can resist, or perhaps summarily ejected. The chief of a bureau is not unfrequently placed in a painful dilemma by a struggle between two rival politicians for the Presidency or

Governorship, in which each insists that his partisans shall be appointed. If he favors A., and B. has the ear of the existing administration, he will be dismissed forthwith; if he does not, and A. is elected, his official life will be brief. Such dramas are frequently enacted in the great political centres, and more than one has taken place in this city during the last few years.

If the axe were laid to the root of the evil by rendering the tenure of office permanent, politics would cease to be a trade because they would no longer afford a hope of profit. There would be few vacancies save through death or resignation, and when one occurred, promotion would take place as it does in the army and navy, in the order of seniority or for meritorious services. The avenues to public life would no longer be closed to men who are averse to the arts of faction and intrigue, and the way lie open for the noblest career that can engage or elevate the mind.

There are some who affect to treat such a reform as a visionary project, a counsel of perfection which might be well enough in Utopia, but is impracticable as political society is now constituted. It is a sufficient answer to this objection that the principle for which I am contending has been established in England by the force of public opinion, and with the results which the best men anticipate from it here. An English minister who should dismiss a public servant on party or personal grounds would lose his self-respect and the confidence of his fellow-countrymen. When Lord Beaconsfield was recently charged with having

made an appointment which, though entirely respectable, was alleged to have been prompted by the wish to serve a political friend, no voice was raised in his behalf in the House of Commons, and he could hardly have withstood the attack had he not shown in a masterly speech in the House of Lords that he had called on the different bureaus for a list of the most meritorious candidates, and chosen him who best deserved the place. A change of administration may necessitate the resignation of some thirty or forty persons who are members of the Cabinet, or the political chiefs of the various departments, but the other offices are filled precisely as they were before.

The marked improvement that has occurred during this century in the tone of English politics has not been attended with a corresponding amelioration here, and our public men have sunk as much below the level of Washington and Hamilton as theirs have risen above that of Sir Robert Walpole. The patronage incident to official position is now justly regarded in England as a trust, and it is felt that one who uses it for his private ends is as little worthy of confidence as a cashier who speculates with the money of the bank. These truths were axiomatic to the men who devised the American Constitution, and when they are again recognized and acted on, we may hope that politics will cease to be a scene of intrigue, and become the chosen pursuit of the wise and good.

It has been no part of my purpose in delivering this address to conceal the ills that afflict the Republic, nor my apprehensions that they will prove mortal if

unchecked. If truth is due in any quarter, it is to our country, and when treating of the dangers that menace her existence. But I do not mean to intimate that the case is hopeless, and have laid the naked facts before you as an incentive to exertion, and not as a reason for despair. There is much in the experience of the past to encourage hope. Corruption is not so rife in our legislative assemblies as it was in Parliament when Sir Robert Walpole could declare from his own knowledge and of no inconsiderable portion of his opponents, "all these men have their price;" or when George III. contributed £6000 from his private purse for the purchase of votes;* and the abuse of patronage was not less familiar to Newcastle, to Bute, or to North, than it is to an American politician of the present day. The entire change that has been wrought in these respects in England during the last ninety years is an assurance that a like purification may be accomplished here. The spirit of reform is at work on both sides of the Atlantic. It was owing to the fearless disclosures of the New York Times, and the zeal of a few private citizens that the villainous crew who were plundering the city of New York were exposed and brought to justice. Recent events in this Commonwealth point in the same direction; and it is not a slight matter that the convention which renominated General Grant in 1872 thought it for their interest to declare: "Any system of the civil service under which the subordinate positions of the govern-

* See May's Constitutional History of England, vol. 1, 317.

ment are considered rewards for mere party zeal is fatally demoralizing, and we therefore favor a reform of the system by laws which shall abolish the evils of patronage, and make honesty, efficiency and fidelity the essential qualifications for public positions, without practically creating a life tenure of office." These professions may have been as insincere as they have proved fallacious, but if hypocrisy is a tribute paid by vice, it at least indicates the existence of the virtue which it seeks to hoodwink.

Gentlemen of the Law Academy, it has been justly said, that the future belongs to youth ; and it rests with you, and with those who, like yourselves, are animated by the generous impulses and lofty purpose that mark the opening years of life, to determine whether the great experiment of self-government shall succeed. The question is a momentous one, because civilization and liberty are both at stake. De Tocqueville long since said, that all the European races would follow the same law of development as ourselves, and end in the democracy which had been established here ; and the subsequent course of events tends to show the truth of his remark. When such a change has once occurred, it is as impossible for a nation to revert to monarchy, or to aristocracy, as it would be for an individual to renew his youth, and the choice lies between a well ordered popular government and the Cæsarism which may afford a temporary refuge from anarchy, but never yet staid the downward course of any people. The conditions are nowhere so favorable to the solution of such a problem as in the United States ; and if we fail,

what country can hope for success.* The issue does not therefore concern ourselves alone, but mankind, and the event must necessarily depend on such an education of the people as will not only inspire them with a love of freedom, but with a knowledge of the dangers with which it is threatened, and the means by which they can be averted or overcome. Once convince the masses that party as now organized is adverse to their interests and the general good and that civil service reform is the much needed corrective, and we may rely on their common sense and patriotism for the rest. No man who has the requisite opportunities and knowledge should regard himself as exempt from this duty, but it belongs primarily to the profession which, from its acquaintance with the principles of constitutional law, is best fitted for such a task. The influence of the Bar, as De Tocqueville finely pointed out, is greater in this country than in any other, and has been largely exerted for good.† The Constitutional Convention, which recently did so much good work in this city, and with such entire earnestness and sincerity of purpose, was composed principally of lawyers, and is a convincing proof of what might be expected from the Bar if the people were free to choose their representatives. It is therefore to the legal profession, as represented by the gentlemen whom I have the honor to address, and, above all, to the young men who in a few years will take the lead, that I would appeal on behalf of

* De Tocqueville *La Democratie en Amerique*, vol. 2, ch. 9, p. 190.

† *La Democratie en Amerique*, vol. 2, chap. 8, p. 174.

our country, to regard her as their client, and devote some portion of their laborious days and nights to the cause of reform. I believe that cause to be necessary and just, and that with such advocacy it will prevail.

Wm
H
L

JAN 30 1945



